

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

SHERILL MICHELL SMITH, next friend to	§	
B.D.S., AN INCAPACITATED PERSON &	§	
TIM WAYNE SMITH, next friend to	§	
B.D.S., AN INCAPACITATED PERSON	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO.: 2:10-cv-00284-J
	§	
CLARENDON INDEPENDENT	§	
SCHOOL DISTRICT by and through MONTY	§	
HYSINGER, SUPERINTENDENT, IN HIS	§	
OFFICIAL CAPACITY AND WAYNE	§	
HARDIN, PRESIDENT OF THE	§	
CLARENDON INDEPENDENT	§	
SCHOOL DISTRICT, IN HIS OFFICIAL	§	
CAPACITY	§	
Defendants.	§	

**FIRST UNOPPOSED MOTION TO ABATE PLAINTIFFS’
RESPONSE TO DEFENDANT’S MOTION TO DISMISS**

NOW COMES B.D.S.¹ (“the student”), An Incapacitated Person, by and through her next friends, Sherrill Michelle Smith and Timothy Wayne Smith, collectively termed Plaintiffs herein, by and through their attorney of record, Martin J. Cirkiel of the Law Firm of Cirkiel & Associates, P.C, and brings this their *First Unopposed Motion to Abate Plaintiffs’ Response to Defendant’s Motion to Dismiss*. In support thereof Plaintiffs would respectfully show the following:

I. FACTUAL RESUME

¹ The initials of the student are used throughout the complaint to protect the confidentiality of the student, even though she is no longer a minor.

1. On 12-9-10, Plaintiff filed their *Amended Original Complaint and Request for Jury Trial*. (Hereinafter, “*Amended Complaint*.”)
2. On 2-7-11, Defendant filed their *Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint and Brief in Support Thereof*. (Hereinafter, “*Motion to Dismiss*”)
3. On March 2, 2011, Martin Cirkel, counsel for Plaintiff spoke by telephone with Slater C. Elza, attorney for Defendants noting that Plaintiffs would amend a second time, their *Original Complaint* and add a party. Counsels further discussed the fact that a response by Plaintiffs to a *Motion to Dismiss* based upon superseded pleadings is not beneficial to the process.
4. As such Counsel for Plaintiffs, Martin Cirkel, asked Counsel for Defendant, Slater C. Elza, to abate the need for Plaintiffs to respond to Defendant’s current *Motion to Dismiss* until such time as Plaintiffs amends their *Amended Complaint* and Defendant files another *Motion to Dismiss*.
5. Counsel for Defendant, Slater C. Elza, stated during the conversation that Defendant was not opposed to abating the need for Plaintiffs to respond to Defendant’s current *Motion to Dismiss* until such time as Plaintiffs amends their *Amended Complaint* and Defendant files another *Motion to Dismiss*.

PRAYER

6. **WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray for and request an order including but not limited to the following relief:
 - a. abating the need for Plaintiffs to respond to Defendant’s current *Motion to Dismiss* until such time as Plaintiffs amends their *Amended Complaint* and Defendant files

another *Motion to Dismiss* , and

- b. such other relief as the Court may deem just and proper in law or in equity.

Respectfully submitted,

Cirkiel & Associates, P.C.

/s/ Martin J. Cirkiel
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

On March 2, 2011, I spoke with attorney for Defendants, who is NOT OPPOSED to this extension of time.

/s/ Martin J. Cirkiel

CERTIFICATE OF SERVICE

This is to certify that on this the _____ day of March, 2011, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic filing system of the Court. The electronic case filing system will send a “Notice of Electronic Filing” to the following attorney of record who has consented in writing to accept this Notice as service of this document by electronic means:

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